

1 OSHA R. MESERVE (SBN 204240)
2 PATRICK M. SOLURI (SBN 210036)
3 SOLURI MESERVE, A LAW CORPORATION
4 510 8th Street
5 Sacramento, California 95814
6 Telephone: (916) 4557300
7 Facsimile: (916) 2447300
8 Email: osha@semlawyers.com
9 patrick@semlawyers.com

10 Attorneys for Local Agencies of the North Delta

11 Specially appearing for Protestant Daniel Wilson for
12 Purposes of Presenting Part 2 Testimony

13 **BEFORE THE**

14 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

15 HEARING IN THE MATTER OF
16 CALIFORNIA DEPARTMENT OF WATER
17 RESOURCES AND UNITED STATES
18 BUREAU OF RECLAMATION
19 REQUEST FOR A CHANGE IN POINT OF
20 DIVERSION FOR CALIFORNIA WATER FIX

21 **OPENING STATEMENT OF**
22 **LOCAL AGENCIES OF THE NORTH DELTA**
23 **AND DANIEL WILSON**

1 **I. INTRODUCTION**

2 Protestants Local Agencies of the North Delta (“LAND”) and Daniel Wilson (“LAND et
3 al.”) have joined with several other Protestant groups, including San Joaquin County, San
4 Joaquin County Flood Control and Water Conservation District, Mokelumne River Water and
5 Power Authority (“San Joaquin et al.”), Sacramento County, and Sacramento County Water
6 Agency (“SCWA”), Yolo County, Central Delta Water Agency/South Delta Water Agency,
7 California Sportfishing Alliance/C-WIN/AquaAlliance, and Daniel Wilson in Part 2. The Part 2
8 cases in chief for LAND and the other protestants explain how the Delta Tunnels (a.k.a.
9 “California Waterfix”) would cause unreasonable impacts to the lives of Delta communities and
10 the environment, and fish and wildlife, and would not be in the public interest. (See LAND-
11 120.) As shown in the Proposed Groupings filed by LAND et al. on December 8, 2017, this
12 coordination will streamline the presentation of testimony and evidence of protestants alleging
13 similar issues.

14 **II. SUMMARY OF TESTIMONY TO BE PROVIDED BY JOINTLY PRESENTED PANELS**

15 **A. Sacramento County Public Interest Panel**

16 Russel Van Loben Sels (LAND-130)

17 Among other witnesses on the Sacramento County Public Interest Panel, you will hear
18 from Russell Van Loben Sels, who will describe his concerns regarding impacts on his home
19 town of Clarksburg, adverse impacts on Amistad Ranches, as well as Delta agricultural
20 impacts more generally. As the president of the Five County Farm Bureau and a lifetime
21 resident and farmer, Mr. Van Loben Sels provides an informed, fact-based perspective
22 regarding why the project would not be in the public interest. He will be joined by several other
23 Sacramento County witnesses who will further describe the unreasonable impacts of the
24 project in Sacramento County and the Delta more generally.

25 **B. LAND Community Impacts Focus Panel**

26 The LAND Community Impacts Focus Panel includes information about the
27 inconsistency of the project with the public interest, examining both localized impacts as well
28 as statewide impacts.

1 David Stirling (LAND-205)

2 A retired resident of Walnut Grove, David Stirling will describe how the specific impacts
3 of the petitioned project would be contrary to the local public interest. In particular, he will
4 describe in detail how the lengthy construction process would disrupt and strain local
5 communities and agricultural operations.

6 David Robinson (LAND-188)

7 David Robinson, a volunteer firefighter in Walnut Grove, will describe how the project
8 would interfere with the provision of Emergency Services. In particular, he will describe how
9 reaching emergencies is already difficult in the Delta, and how the project would make it
10 worse. Mr. Robinson will also discuss how the project itself would increase demand for
11 emergency services on local, primarily volunteer, fire departments with insufficient capacity to
12 respond. Mr. Robinson also points to Petitioners' failure to propose mitigation or proposed
13 conditions to alleviate the proposed project's strain on local emergency responder resources.

14 Daniel Wilson (LAND-132)

15 A local farmer, businessperson and resident of the Delta, Mr. Wilson's testimony will
16 provide further information regarding the impacts of the proposed project on agricultural
17 operations in the Delta. Mr. Wilson will describe the challenges that Delta farmers would face
18 if the project is allowed to interfere with agricultural operations, including trucking of products
19 out of the Delta. Mr. Wilson also describes the project's likely negative impact on the viability
20 of necessary farm support businesses.

21 Dr. Fraser Shilling (LAND-135)

22 In an examination of both local as well as statewide concerns, Dr. Fraser Shilling, a
23 U.C. Davis professor, will address the subjects of (a) interference with wildlife movement; (b)
24 negative impacts on human communities; (c) incompatibility with sustainability and related
25 principles; and (d) inconsistency with regional water management. Dr. Shilling will describe
26 how roads impacts from the project would affect directly and indirectly terrestrial biodiversity in
27 the Delta. He also will describe the regional scale of construction and operation of the Delta
28 Tunnels project with respect to health impacts on Delta communities. He will also describe

1 how the project would be incompatible with the state's own adopted sustainability principles,
2 observing, too, that DWR's project description includes no analysis of how the project would fit
3 into the basic definitions of sustainability. Last, Dr. Shilling describes how the project would be
4 inconsistent with the state's Integrated Regional Water Management planning and the
5 Sustainable Groundwater Management Act. By examining the project in light of both local and
6 statewide considerations, Dr. Shilling will make clear that this project would not be in the public
7 interest.

8 Sarah Hemly (LAND-198)

9 Next, Sarah Hemly will describe how she and her family developed the Hemly Cider
10 product from Delta pears. She also will talk about how Hemly Cider is one of the many new
11 innovative farm based products making state, national, and international waves out of the
12 Delta. She also discusses how her cider and other unique Delta agricultural products are part
13 of a nationwide and growing Farm to Fork movement that agritourism, including wine tasting,
14 farm stands, custom crafters and artists inspired by its history and natural beauty is quickly
15 gaining traction.

16 **C. Groundwater Focus Panel**

17 The Groundwater Focus Panel, includes witnesses from LAND, San Joaquin County et
18 al., and the Sacramento County Water Agency. While Part 1 testimony presented by LAND,
19 San Joaquin County et al. pertained primarily to likely impacts on specific groundwater wells,
20 this Part 2 testimony examines the broader public interest in groundwater resources, and in
21 particular, how the project would further strain groundwater subbasins generally located to the
22 east and to the south of the proposed intakes.

23 The Sacramento River is a major source of groundwater recharge and provides
24 recharge along the portion of the river downstream of where the intakes are proposed. DWR's
25 Bulletin 40 shows that the Sacramento River is elevated above the groundwater table in areas
26 west of Elk Grove, down to Walnut Grove, as well as the area where the Cosumnes River
27 enters the Delta. When elevated, the river flows laterally into the adjacent groundwater
28 subbasins.

1 If the river stage reduces, the already declining water table would get worse, in some
2 cases placing groundwater supplies out of reach of riparian vegetation. (See ECOS-1, pp. 4-
3 5.) These reductions in groundwater levels would harm local water users, as well as Stone
4 Lakes National Wildlife Refuge, McCormack Williamson Tract and the Cosumnes River
5 Preserve. Agencies working to comply with the new requirements of the Sustainable
6 Groundwater Management Act are concerned regarding the effect of the project on their ability
7 to reach sustainability as required by law. Unfortunately, the FEIR/S and other documents for
8 the proposed project do not provide an adequately substantive analysis of the project's long-
9 term regional groundwater impacts. Nor are adequate mitigation measures or conditions
10 provided to ensure protection of local groundwater resources that are so critical to both fish
11 and wildlife and the public interest in reaching groundwater sustainability. Rather, The FEIR/S
12 includes a new requirement to monitor groundwater for just five years into operation of the
13 project, without any commitment to ensure that the subbasins are not chronically depleted by
14 the project's dewatering of the Sacramento River.

15 John Lambie (SJC-223)

16 Petitioners agree that their project would lower water levels in the area downstream of
17 the proposed new intakes. As explained by John Lambie, the reduction in wetted surface area
18 of the river would translate to reductions in recharge to the American and East San Joaquin
19 subbasins that can reasonably be predicted using available tools and data. (SJC-227.) Mr.
20 Lambie expresses concern that the long-term regional groundwater depletion by the project
21 would occur in two already depleted, high priority groundwater subbasins—the South
22 American Groundwater Subbasin and the Eastern San Joaquin Groundwater Subbasin. (See
23 LAND-124, SJC-225, SJC-226, ECOS-7.) Mr. Lambie furthermore describes why these
24 depletions are problematic from a Sustainable Groundwater Management Act compliance
25 standpoint, and would not be in the public interest.

26 Josef Tootle (SJC-285)

27 Following up on testimony provided in Part 1, Mr. Tootle describes how the 45,400,000
28 million cubic yards of muck that the project, if it proceeds, would be generated from tunneling.

1 The amount of muck expected to be generated could build the equivalent of just over 13 Great
2 Pyramids of Giza. He also describes how this vast volume of muck would likely be a threat to
3 both surface and groundwater quality. Mr. Tootle also discusses the potential for fairly
4 common loss of ground failures that occur during tunneling, which could lead to impairment of
5 Delta levees and related Delta infrastructure. Mr. Tootle underscores the need for far more
6 specific information regarding the geotechnical conditions in the vicinity of the proposed
7 tunnels in order to develop an adequate and safe design for the project.

8 **D. Public Trust/Public Interest Focus Panel**

9 Marc Del Piero (CSPA-208)

10 Marc Del Piero, a water attorney and former Board member, will describe the applicable
11 legal standards for the analysis of Part 2 issues pertaining to the public interest and the public
12 trust. In addition, Mr. Del Piero discusses the project's likely shift of costs onto future
13 Californians, in stark contrast to an approach that seeks intergenerational equity and water
14 sustainability. Mr. Del Piero also explains why a water availability analysis is required by
15 Water Code section 1375, subdivision (d), as well as the perils of continued reliance on "paper
16 water" in this hearing. With reference to the Board role described in the *Racanelli Decision*
17 when issuing appropriation permits: (1) to determine if surplus water is available and 2) to
18 protect the public interest, Mr. Del Piero will vociferously disagree with Petitioners that adding
19 9,000 cfs of diversion capacity to the northern Delta, some 35 miles away from the existing
20 diversions is a "minor change" that can be approved without harming public interest.

21 **III. CRUCIAL GAPS IN SUFFICIENCY OF PETITION REMAIN**

22 In addition to providing a summary of testimony presented to address the hearing
23 questions for Part 2, LAND et al. wishes to restate its oft-stated concern that the Petition itself
24 remains incomplete and is inadequate for purposes of proceeding with a fair and complete
25 hearing process. At nearly every turn, Petitioners have failed to provide the most basic
26 information about their proposed project to allow for protestants to understand and respond to
27 the project's likely effects on other water users, fish and wildlife, and more generally the public
28 interest and public trust resources. Shortly after the Petition was filed in 2015, LAND co-wrote

1 a letter challenging the sufficiency of the Petition for purposes of proceeding with this water
2 rights hearing. Though Petitioners filed an addendum to the initial petition that corrected a few
3 of the blatantly missing items in the form, and the FEIR/S has been certified by DWR, much of
4 the project remains in a shroud of uncertainty.

5 As just one example, the Petitioners refuse to commit to any particular operations, and
6 have asked for an extremely broad range of future operations subject to a poorly defined
7 adaptive management program in the future. Just as was the case in Part 1, the extremely
8 broad range of proposed operations, coupled with the weak modeling approach, provide water
9 users and the public inadequate information with which to assess the impacts of the proposed
10 changes. Moreover, best available science is specifically defined by the Delta Stewardship
11 Council for covered actions, such as the Delta Tunnels, and should be applied in this hearing.
12 It is not best available science to refuse to use currently available tools, such as predictive
13 modeling and properly calibrated and vetted models, to understand the likely effects of the
14 proposed massive changes to the movement of water in the Delta.

15 Petitioners have also failed to provide most basic diversion location information in
16 support of their Petition. The Petition states that the only change is in a point of diversion,
17 referring to the expired permit issued long ago for a diversion at Hood. Petitioners propose to
18 “change” this nonexistent diversion to *three other sites* in the North Delta. (See Map 1 of 5 and
19 table listing points of diversion and rediversion on last page of petition; see also October 30,
20 2015 Hearing Notice, pp. 9-10.) The time to construct the Hood diversion point has long
21 expired and the petition to extend the time to undertake that work remains pending in separate,
22 protested proceedings. (See DWR-313.) Thus, the Petition seeks *new* diversions on the
23 Sacramento River, which is a petition for a new water right, not a change in point of diversion.

24 In addition to being located in different locations than the expired Hood point of
25 diversion, the new proposed diversions in the North Delta would also increase the diversion
26 capacity of the state and federal water projects beyond the limits of their current permits.
27 Coupled with ill-defined and under-developed adaptive management, this increase in diversion
28 capacity is likely to lead to increases in the diversion of freshwater out of the estuary, which is

1 not in the public interest and runs contrary to the 2009 Delta Reform act mandate to reduce
2 reliance on the Delta and to also enhance and restore the Delta.

3 The chronic failure of Petitioners to provide a clear and fully developed project
4 definition, despite being given multiple opportunities to fill in the gaps, should not be tolerated.
5 Their Petition should be subject to the same informational requirements and standards as
6 other petitions for water rights before the Board. The vast scale of the impacts to water users,
7 the public and the entire region necessitates a full and thorough understanding of the project,
8 which almost two and half years into this hearing, is still missing. This *laissez faire* and shifting
9 approach to providing essential information about the project *they propose* has already led to a
10 significant waste of resources by the public and others.

11 **VIII. CONCLUSION**

12 While Petitioners continue to attempt to minimize the scale of the change proposed in
13 the Petition—both on land and in water—LAND et al.’s Part 2 testimony will help describe for
14 the Board the local, regional and statewide impacts of the project, and why this project would
15 not be in the public interest from either a local or a statewide perspective.

16
17
18 Dated: December 18, 2017

Respectfully submitted,

SOLURI MESERVE,
A LAW CORPORATION



Osha R. Meserve
Attorneys for Protestants
Local Agencies of the North Delta

1 **STATEMENT OF SERVICE**

2 I hereby certify that I have this day, December 18, 2017, submitted to the State Water
3 Resources Control Board and caused a true and correct copy of the following document:

4 **OPENING STATEMENT OF**
5 **LOCAL AGENCIES OF THE NORTH DELTA AND DANIEL WILSON**

6 to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current**
7 **Service List** for the California WaterFix Petition Hearing, dated December 18, 2017 posted by
8 the State Water Resources Control Board at
9 [https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water
fix/service_list.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml)

10 I certify that the foregoing is true and correct and that this document was executed on
11 December 18, 2017.

12 Signature:  _____

13 Name: Mae Ryan Empleo

14 Title: Legal Assistant for Osha R. Meserve
Soluri Meserve, A Law Corporation

15 Party/Affiliation:

16 Local Agencies of the North Delta

17 Daniel Wilson

18 Friends of Stone Lakes National Wildlife Refuge

19 Save Our Sandhill Cranes

20 Environmental Council of Sacramento

21 Address:

22 Soluri Meserve, A Law Corporation

23 510 8th Street, Sacramento, CA 95814